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In the

Supreme Court of the United States.

OCTOBER TERM, 1941.

ASSOCIATED HOSPITAL SERVICE CORPORATION OF MASSACHUSETTS, *Petitioner*,

v.

THOMAS B. HASSETT, FORMER ACTING COLLECTOR, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

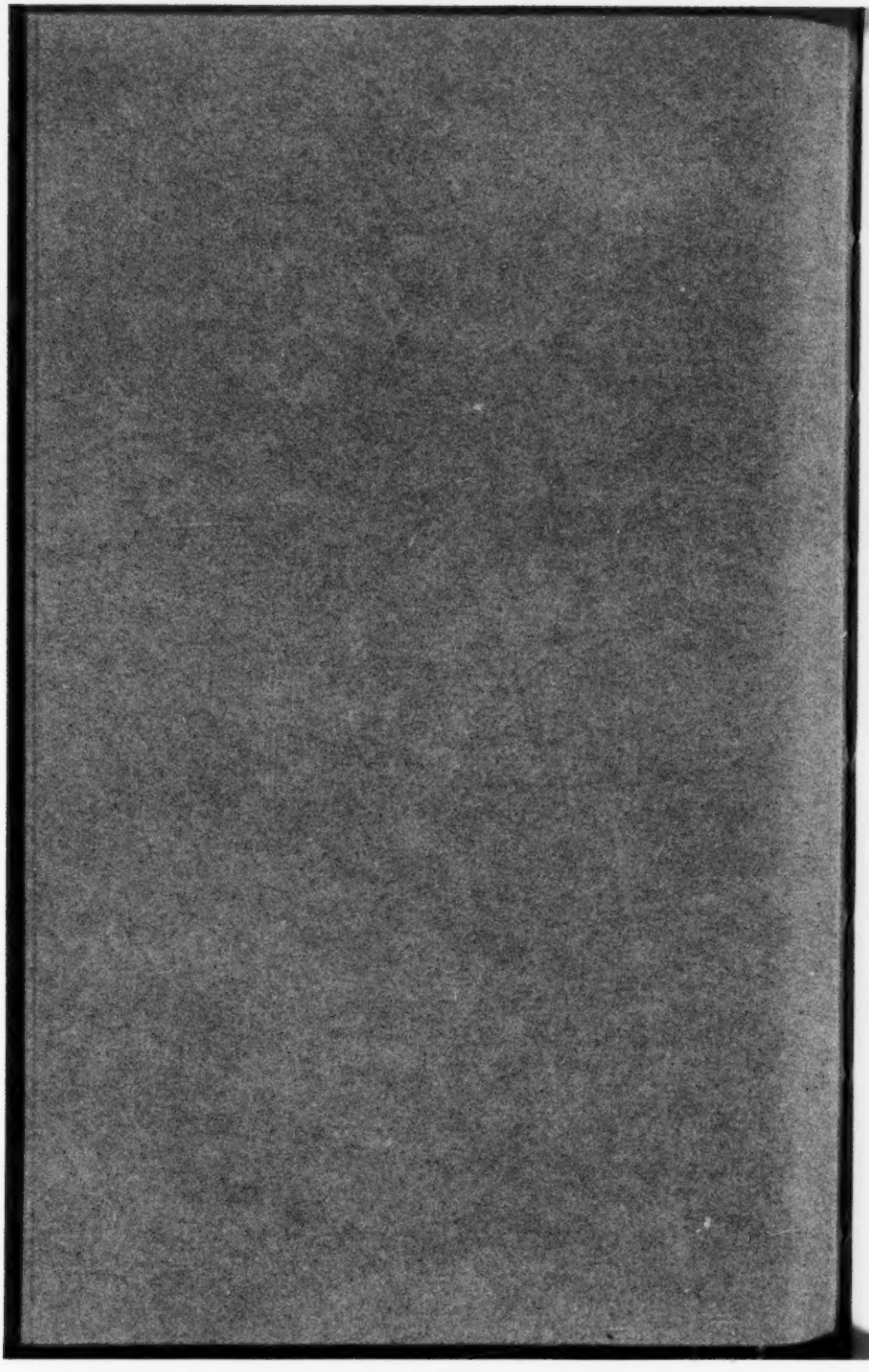
AND

BRIEF IN SUPPORT THEREOF

JOHN P. GARR,
Attorney for Petitioner.

Of Counsel:
Roger W. Hardy.

ANDREW J. CASSIDY & SON, LAW PRINTERS, BOSTON.



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ASSOCIATED HOSPITAL SERVICE CORPORATION OF MASSACHUSETTS,
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v.

THOMAS B. HASSETT, FORMER ACTING COLLECTOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

This is a petition for a writ of certiorari to review the final judgment of the Circuit Court of Appeals (Magruder, J., dissenting) entered February 4, 1942 (R. 51), reversing a judgment of the District Court for the District of Massachusetts entered March 26, 1941, in favor of the plaintiff, this petitioner.

Statement of the Matter Involved.

This action at law was brought by complaint filed April 16, 1940, to recover taxes illegally collected by the defendant under the Social Security Act (49 Stat. 620, c. 531). Said Act provides in part (section 811 (b) (8), now amended

and part of Internal Revenue Code, section 1426 (b) (8)) for exemption from the taxes for—

> "(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

The plaintiff is incorporated under General Laws of Massachusetts, chapter 176A, as added by chapter 409 of the Acts of 1936. Said chapter exclusively deals with the incorporation and activities of "Non-Profit Hospital Service Corporations." Sections 1, 2 and 3 of said chapter specify the general nature of the business of such a corporation, the requirement of control by representatives of public and charitable hospitals, and the approval of rates by the commissioners of insurance and of public welfare, and sections 4 to 9 provide certain other controls and administrative requirements. Section 10 reads as follows:

> "*Exemption from Taxation:* Every corporation subject to this chapter is hereby declared to be a charitable and benevolent corporation, and its property shall be exempt from state, county, district and municipal taxes."

Evidence of the operations of the plaintiff was submitted to the District Court on a statement of agreed facts (R. 6-32, with exhibits) and the testimony of one witness (R. 38-47). The District Judge found as a fact that the plaintiff

was organized and operated under said chapter 176A (R. 35).

The nature of the plaintiff's activities is set out in some detail in the opinion of the Circuit Court (R. 52-54, 59-60). The plaintiff is the Massachusetts representative of a nationwide movement for non-profit hospital service plans under the auspices of the American Hospital Association. The plaintiff, in common with other plans, contracts with public, charitable and other approved hospitals for furnishing hospital care to its members, and contracts with members of the public to furnish them such care. There are no shareholders and there is no provision for distribution of surplus.

As a result of consideration of the nature and characteristics of the plaintiff and of the fact that Congress, in incorporating a hospital service plan in all respects like the plaintiff, declared it to be charitable and tax-exempt (*infra*, p. 5), the District Judge found as a fact that the plaintiff is charitable and ruled that it was exempt from Social Security taxes (R. 37).

The government appealed and the Circuit Court reversed with a 2 to 1 opinion.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on February 4, 1942. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

Is the petitioner "a corporation . . . organized and operated exclusively for . . . charitable purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part

of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation''?

Reasons for Granting the Writ.

1. The decision of the issue in this case is a matter of public importance to the people of a number of states and will serve to define the extent to which the states are to be encouraged to provide for their citizens inexpensive methods of health protection through charitable corporations.

At the time of the hearing in the District Court there were hospital service plans in 38 states (R. 38), some without benefit of special enabling legislation. There are now throughout the country over 70 plans, having an aggregate of over 8,000,000 subscribers.

There is enabling legislation in 29 states and the District of Columbia. Most of the enabling acts are similar to the Massachusetts statute. The several legislatures have seen the advantage to the health of their citizens of minimum cost hospitalization protection furnished through the cooperation of local hospitals by a central collecting and disbursing organization. In most instances tax exemption has been granted, the profit motive has been removed and the dedication of surplus to charitable purposes has been required by a legislative condition that the organization qualify as a charity.

To permit the tax in this case to be collected is to deny to the legislature creating a corporation the right to condition the existence of the corporation on its maintenance of charitable characteristics.

2. The decision of the Circuit Court of Appeals in this case is in conflict with the local law. The core of the decision is that the plaintiff is not a charity under Federal law. The Federal law as to what constitutes a charity is like the

Massachusetts law. Therefore the decision implies that the plaintiff is not a charity under Massachusetts law.

The plaintiff is, however, a charity under Massachusetts law for the legislature has said so in express words in the enabling Act. The local law creates the characteristics of its own corporations. The Federal law and the Massachusetts law are alike in determining what are the characteristics of a charity. Therefore the plaintiff has the characteristics of a charity under the law common both to the United States and to Massachusetts.

3. The decision of the Circuit Court of Appeals in this case conflicts with the Act of Congress creating a hospital service plan in the District of Columbia and defining such a plan as charitable.

> 53 Stat. (part 2) c. 698.
> Public No. 395, 76th Congress, 1st Session.

This Act incorporates certain persons under the name of "Group Hospitalization, Inc.," and gives the corporation powers and subjects it to controls similar in all respects to the powers and controls of a corporation organized under chapter 176A of the General Laws of Massachusetts. Section 8 of this Act says:

> "This corporation is hereby declared to be a charitable and benevolent institution, and all of its funds and property shall be exempt from taxation other than taxes on real estate."

Congress has declared that a non-profit hospital service corporation similar to the plaintiff is a charity. Such controlling declaration is in conflict with the decision of the Circuit Court here.

4. The decision here is in substantial conflict with the decision of the Seventh Circuit Court in *Harrison* v. *Barker Annuity Fund*, 90 Fed. (2d) 286, the decision in the Third

Circuit Court of *Mutual Aid & Benefit Association* v. *Commissioner*, 42 Fed. (2d) 619, and *Gimbel* v. *Commissioner*, 54 Fed. (2d) 780, and the decision of the Fifth Circuit in *Eagan* v. *Commissioner*, 43 Fed. (2d) 881.

The words of the income tax (Internal Revenue Code, section 101 (6) and section 23 (q)), of the gift tax (Internal Revenue Code, section 1004 (a) (2) (B)) and of the estate tax (Internal Revenue Code, section 812 (d)) relating to charitable exemptions or deductions are similar to those of the Social Security Act. In each of the foregoing cases the Court, with or without the benefit of state legislation, held a mutual benefit organization to be a charity. Even if the plaintiff is nothing more than a mutual benefit organization, offering membership to a large number of people throughout the states, it would be held a charity following these cases.

In its conception of a charity the decision here is in conflict with the old decision of the Eighth Circuit Court in *Union Pacific Railway Co.* v. *Artist*, 60 Fed. 365. There the Court held a non-profit hospital plan operated by the railway for its employees and financed by employees and by the Company to be a charity.

5. The Federal question of interpretation of exemptions of the Social Security Act has been decided by the Circuit Court contrary to decisions of this Court. The Federal law is that state law creates rights and assigns characteristics to those within its jurisdiction. That Federal law has not been followed by the Circuit Court here.

Wherefore your petitioner respectfully prays that the petition for a writ of certiorari be granted.

JOHN P. CARR,
Attorney for Petitioner.

Of Counsel:
ROGER W. HARDY.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the Circuit Court of Appeals was handed down on February 4, 1942, and has not yet been officially reported. It appears on pages 51 to 61 of the Record. The opinion of the District Court is reported in 37 Fed. Supp. 822, and appears at pages 34 to 37 of the Record.

Jurisdiction.

This Court has jurisdiction under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Statement of the Case.

Massachusetts is one of a number of states whose legislatures have authorized the formation of non-profit hospital service corporations to be operated on a charitable basis. The plaintiff is so incorporated (R. 35).

It appears from its by-laws (R. Exhs. B and C) and from the findings (R. 37) that the plaintiff has no shareholders, stockholders or other forms of beneficial interest in any individual or corporation. Its voting members are representatives of hospitals, the medical profession and the general public (R. 52). Its officers and directors have served without compensation (R. 53).

The plaintiff makes contracts with and receives money from members of the public who are subscribers. It makes contracts with and pays money to hospitals for care of its subscribers. The administration of these activities is the whole of plaintiff's business.

The subscriber's contracts (R. Exhs. F and G) are for a one-year period with privilege of termination by either

party and have no provisions for assessment from or refund to subscribers. If the funds of the plaintiff are not sufficient to pay hospital bills, the hospital contracts (R. Exhs. D and E) require acceptance by the hospitals of a proportion. Full responsibility by hospitals for the fulfillment of subscriber contracts is therefore required (R. 40).

There cannot be profits in the usual sense of the term. Any excess of receipts over disbursements for a given period may be used to make up an excess of hospitalization over receipts in another period. There is and can be no refund of subscribers' contributions.

These facts are stated in the District Court opinion (R. 34-36) and in the Circuit Court opinion (R. 52-54). The only misstatement in the latter is (R. 54) that "membership . . . is composed largely of the middle class and well-to-do." The evidence does not support this statement. It appears in the subscriber's contract (R. Exh. G) that the plaintiff has a ward plan to appeal to the income bracket of $1000 to $2000 a year on a low rate basis. The testimony (R. 42), which the trial judge accepted (R. 34), was: "We were and now are primarily interested in that great middle class of people who find it most difficult to meet the cost of hospitalization. The indigent are adequately provided for; the well-to-do can afford hospitalization." Obviously the appeal of these plans is to the middle class worker who has $100 or $200 to pay bills but the payment of which upsets his budget. By these plans people of small or moderate means are able in large measure to pay their bills and keep the self-respect which is an attribute of a good citizen. And obviously the interest of the state is to encourage a plan which will lead its people away from the temptation to avoid hospitals and hospital bills until it is too late.

We submit that this kind of organization may fairly be called a charity in the sense in which Congress uses that term.

Specification of Errors.

The Circuit Court of Appeals erred—

1. In holding that the plaintiff is not a corporation organized and operated for charitable purposes.

2. In disregarding the command of the Massachusetts legislature that for the plaintiff to exist it must qualify as a charity.

3. In refusing to Massachusetts the right to fix the character of its corporations.

4. In holding the plaintiff is a business corporation.

5. In ignoring the declaration of Congress that a similar corporation operating in the District of Columbia is a charitable corporation.

6. In failing to follow the law of Massachusetts in determining the attributes of the plaintiff.

7. In reversing the decision of the District Court.

Summary of Argument.

The characteristics of the plaintiff are fixed by state law. The Massachusetts legislature has required that an organization incorporated under its chapter 176A have the characteristics of a charity. The law of the United States and the law of Massachusetts as to what constitutes a charity are in harmony. Therefore the legislative condition that the plaintiff incorporate and operate like a charity requires it to incorporate and act like a charity in conformity with a law which is like the law of the United States.

The characteristics of the plaintiff being fixed by state law, the Federal tax result depends on these characteristics. Congress intended to exempt from tax organizations having the characteristics of a charity in accordance with Federal law. The plaintiff has these characteristics.

Tax laws are to be uniformly interpreted throughout the country. The decision of the Circuit Court here creates lack of uniformity in the light of both the special Act of Congress and decisions in other circuits.

This is a matter of public importance to a kind of community organization which has greatly expanded in recent years.

Argument.

1. It is familiar law in our Federal system that state law creates the rights, privileges and characteristics of persons within the jurisdiction of the state. This has been emphasized of late by the change of interpretation of section 34 of the Federal Judiciary Act of September 24, 1789 (U.S. Code, Title 28, sec. 725). When, therefore, the Massachusetts legislature requires, as it does in section 10 of chapter 176A of the General Laws, that every hospital service plan be a charity, it requires such a plan to assume the attributes and characteristics of a charity. As was said in *Harrison* v. *Barker Annuity Fund*, 90 Fed. (2d) 286 (C.C.A. 7): "The corporation was organized for one purpose and one only and that special grant of authority from the state conclusively estops it from exercising any other powers."

There can be no question that the plaintiff operates within the terms of its charter. The trial judge so found (R. 35) and the entering into subscriber and hospital contracts is required in terms by General Laws, chapter 176A, section 1.

The remaining question is whether the characteristics of a charity under Federal law are similar to those under Massachusetts law. This Court and the Supreme Judicial Court of Massachusetts have a common background of long-decided cases as to what constitutes a charity and the re-

lationship of the sovereign and the chancery court to a charity. Some of these cases, citing as authority and being cited with approval by the other court of last resort, are:

Russell v. *Allen*, 107 U.S. 163.
Jones v. *Habersham*, 107 U.S. 174.
The Late Corporation of Latter Day Saints v. *United States*, 136 U.S. 1.
Hopkins v. *Grimshaw*, 165 U.S. 342.
Sohier v. *Wardens of St. Paul Church*, 12 Met. 250.
Saltonstall v. *Sanders*, 11 Allen, 446.
Jackson v. *Phillips*, 14 Allen, 539.
Old South Society v. *Crocker*, 119 Mass. 1.

These cases are all landmarks in the law of charities and enunciate like principles. When an organization qualifies as a charity under Massachusetts law it qualifies also under Federal law, for these laws are the same. And when the plaintiff is required by Massachusetts law to act as a charity and acts in that way, it is a charity under Federal law.

This is not like the cases where state law applies different nomenclature from that of Congress to similar things, as for example in—

Burk-Waggoner Oil Association v. *Hopkins*, 269 U.S. 110.
Palmer v. *Bender*, 287 U.S. 551.
Morgan v. *Commissioner*, 309 U.S. 78.

This is a case where the substantial rights and duties created by the state law must be recognized in the administration of Federal tax laws.

Poe v. *Seaborn*, 282 U.S. 101.
Blair v. *Commissioner*, 300 U.S. 5.
Helvering v. *Fuller*, 310 U.S. 69.

2. The ultimate test of a charity under the Social Security law was intended to be the use to which its income is applied.

H. Rep. No. 615, 74th Congress, 1st Session, pp. 21-22 and 32-33.

This may be income from commercial operations.

Trinidad v. *Sagrada Orden de Predicadores,* 263 U.S. 578.

It is common knowledge that the large charitable organizations in this country conduct business and manage real estate to produce money to further their charitable ends. This plaintiff does nothing more than conduct a hospital insurance business, with its surplus, if any, to be used for members in a future period or applied *cy près.* The present surplus is obviously accumulated to pay hospital bills in time of epidemic or other calamity. That period, sure to come if history is believed, will be the testing hour of the plaintiff and Congress intended that its potentiality should not be reduced by the payment of Federal taxes.

The statement of the majority in the opinion of the Circuit Court that subscribers do not join the plaintiff with any donative intent (R. 56) is irrelevant.

Union Pacific Railway Co. v. *Artist,* 60 Fed. 365 (C.C.A. 8).

Charities conduct many business relationships with persons who have no donative intent. The application of the surplus of the charity is the only thing that counts. The plaintiff has no profits in the ordinary sense of surplus disposable at will. Its surplus belongs to the sovereign that created it.

The argument that surplus on liquidation will be applied *cy près* is dismissed by the majority of the Circuit Court on the ground that liquidation while solvent is extremely unlikely (R. 56). The proposal of the President of the United States in his 1942 budget message to include hospitalization insurance as a part of an enlarged Social Security program suggests a likely reason for liquidation if such proposal becomes law. In the meantime, it is submitted, the effort of the states to work out a plan of hospitalization insurance on a voluntary basis through the means of a private charity under the supervision of state officials is deserving of the encouragement afforded to charities in the tax acts.

3. Taxing acts are to be construed so as to be uniformly applied throughout the country.

Heiner v. *Mellon,* 304 U.S. 271.

There is no such uniformity as a result of the decision here and the decision referred to in the petition holding mutual benefit associations to be charitable.

Gimbel v. *Commissioner,* 54 Fed. (2d) 780.
Mutual Aid & Benefit Association v. *Commissioner,* 42 Fed. (2d) 619.
Harrison v. *Barker Annuity Fund,* 90 Fed. (2d) 286.

Under the Circuit Court decision here a gift to the plaintiff would not be a proper deduction in computing income tax (R. 59). Yet the plaintiff, open to enough people in the community and looking to their better health, is certainly a charity in the broad sense as used in the Gimbel case. A gift to the plaintiff would be exactly like a gift to a hospital —it would help take care of that indefinite class who may be sick tomorrow.

There is no uniformity when the Eighth Circuit Court in *Union Pacific Railway Co.* v. *Artist,* 60 Fed. 365, at page 369, relying on *Jackson* v. *Phillips,* 14 Allen, 539, holds a company plan for hospitalization to be charitable while the Circuit Court of Appeals here holds a state-wide plan not to be charitable.

There can be no such uniformity when the Congress has specifically defined an organization similar in all respects to the plaintiff as a charity and exempted it from the taxes which the Circuit Court says were properly collected from the plaintiff. Section 8 of the Act creating "Group Hospitalization, Inc.," (quoted in full *supra,* p. 5), certainly shows Congressional appreciation of the motives actuating the Massachusetts legislature in enacting section 10 of chapter 176A of the General Laws (quoted *supra,* p. 2) and of the 18 other state legislatures declaring such corporations charitable (Appendix B, p. 16).

There can be no Congressional reason for attempting to differentiate between hospital service plans in the states and in the District of Columbia.

Respectfully submitted,

JOHN P. CARR,
ROGER W. HARDY.

Appendix A.

Relevant Statutes.

General Laws, Chapter 176A.

Non-Profit Hospital Service Corporations.

Section 1. Non-profit Hospital Service Corporations Governed by Chapter; Exemption from Provisions of Insurance Laws. Any corporation organized under the laws of the commonwealth for the purpose of establishing, maintaining and operating a non-profit hospital service plan whereby hospital care may be provided by such corporation, or by a hospital with which it has a contract for such care and which is maintained by the commonwealth or a political subdivision thereof, or maintained by a corporation organized for hospital purposes under the laws of the commonwealth, or such other hospitals as shall be designed by the commissioner of public welfare, to such of the public who become subscribers to said plan under a contract which entitled each subscriber to certain hospital care, shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of the commonwealth, except as otherwise provided in this chapter.

Section 2. Incorporation; Directors; Consent of Commissioners of Insurance and Public Welfare. . . .

Section 3. Contracts for Rendering Hospital Service to Subscribers; Rates. Any corporations subject to this chapter may enter into contracts for the rendering of hospital service to any of its subscribers only with hospitals referred to in section one. The contracts issued and the rates charged by such corporation to the subscribers for hospital care shall at all times be subject to the approval of the commissioner of insurance. All rates of payments to hospitals made by such corporation under contracts provided for in

this section shall be approved prior to payment by the commissioner of public welfare.

Section 4. Annual Statement. . . .

Section 5. Visitation and Examination of Affairs of Corporation; Witnesses. . . .

Section 6. Acquisition Costs in Connection with Solicitation of Subscribers. . . .

Section 7. Investment of Funds. . . .

Section 8. Dispute between Corporation and Hospital; Review of Decisions of Commissioners. . . .

Section 9. Injunction, Receivership and Liquidation. . . .

Section 10. Exemption from Taxation. Every corporation subject to this chapter is hereby declared to be a charitable and benevolent corporation, and its property shall be exempt from state, county, district and municipal taxes.

Section 11. Compensation of Officers and Others. . . .

Appendix B.

State Legislation.

The following state statutes declare non-profit hospital service corporations to be charitable institutions:

California, Insurance Code, sec. 11493-5.
Georgia, Laws of 1937, No. 379, sec. 18.
Illinois, Revised Statutes, 1939, c. 32, sec. 562.
Iowa, Code of 1939, c. 403.1, sec. 8895.15.
Kansas, Laws of 1941, c. 259, sec. 10.
Louisiana, Acts of 1940, No. 267, sec. 1.
Maine, Acts & Resolves of 1939, c. 149, sec. 10.
Maryland, Annotated Code, art. 48A, sec. 243.
Massachusetts, General Laws, c. 176A, sec. 10.
Michigan, Compiled Laws, 1940 Supplement, sec. 10135-132q.

Nebraska, Laws of 1941, c. 43, sec. 13.
New Jersey, Laws of 1938, c. 366, sec. 18.
New Mexico, Laws of 1939, c. 66, sec. 611.
North Carolina, Public Laws of 1941, c. 338, sec. 14.
Ohio, General Code, sec. 669-13.
Pennsylvania, Acts of 1937, No. 378, sec. 8.
Rhode Island, 1939 Acts & Resolves, c. 719, sec. 8. .
South Carolina, Acts of 1939, No. 296, sec. 11.
Wisconsin, Statutes, 1939, c. 180.32(8).

The following states exempt non-profit hospital service corporations from taxation without a declaration of charitable status:

Alabama, General Laws, 1935, No. 544.
Connecticut, 1939 Supplement to General Statutes, c. 192a, sec. 1147e.
Mississippi, General Laws of 1936, c. 177, sec. 6.
New York, Cahill's Consolidated Laws, 1940 Supplement, Insurance Law, art. 9-C, sec. 251(3).
Vermont, Acts of 1939, No. 174, sec. 8.

The following states have enabling legislation which says nothing about charitable status or exemption from taxation:

Kentucky, Acts of 1940, c. 98.
New Hampshire, Laws of 1939, c. 80.
Minnesota, Session Laws of 1941, c. 53.
Texas, General Laws (1939 Session), p. 123.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1047

ASSOCIATED HOSPITAL SERVICE CORPORATION OF MASSACHUSETTS, PETITIONER

v.

THOMAS B. HASSETT, FORMER ACTING COLLECTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 34–37) is reported in 37 F. Supp. 822; that of the Circuit Court of Appeals (R. 51–61) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 4, 1942. (R. 61.) The petition for a writ of certiorari was filed March 17, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Is the taxpayer exempt from tax under Title VIII of the Social Security Act as a "charitable" corporation within the meaning of Section 811 (b) (8)?

STATUTE INVOLVED

Social Security Act, c. 531, 49 Stat. 620:

> TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT.
>
> * * * * *
>
> SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date: (42 U. S. C., sec. 1001.)
>
> * * * * *
>
> SEC. 811. When used in this title—
>
> * * * * *
>
> (b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—
>
> * * * * *
>
> (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals,

> no part of the net earnings of which inures to the benefit of any private shareholder or individual. (42 U. S. C., sec. 1011.)

STATEMENT

The facts as stipulated (R. 6–32), and as found by the District Court (R. 34–37), may be summarized as follows:

The taxpayer is a corporation organized under the laws of Massachusetts. Its charter, which became effective as of March 11, 1937 (R. 11), stated that it was organized for the following purposes (R. 10):

> To establish, maintain and operate a non-profit hospital service plan, whereby hospital care may be provided by this corporation, or by a hospital with which it has a contract for such care and which is maintained by the Commonwealth or a political subdivision thereof, or maintained by a corporation organized for hospital purposes under the laws of the Commonwealth, or such other hospitals as shall be designated by the Commissioner of Public Welfare, to such of the public who become subscribers to said hospital service plan, under a contract which entitles each subscriber to certain hospital care; * * *.

The corporation has three classes of members, consisting of voting members, members at large, and participating hospital members. The voting members of the corporation consist of the Trustees and Executive Committee of the Hospital Council

of Boston, Massachusetts Hospital Association, Boston Chamber of Commerce, Associated Industries of Massachusetts, Community Federation of Boston, Council of Social Agencies, and six medical societies. Members at large consist of such individuals, associations, firms or corporations as are elected by a vote of a majority of the board of directors of the taxpayer and have such voting rights, if any, as may be conferred upon them by the board of directors. (R. 12–13.)

The affairs, property and business of the corporation are managed by the board of directors, consisting of not less than seven nor more than eleven directors, elected by the voting members. The board of directors is made up of persons the majority of whom are directors or trustees of hospitals designated in Chapter 176A, Section 1, of the General Laws of Massachusetts. (R. 16.)

Under its plan of operation, the taxpayer entered into contracts with such individuals as desired to become subscribers. For the regular payment of fixed sums of money specified hospital services were to be rendered to such subscribers, or to certain members of their families. (R. 30B, 30C, 32A.)

In order to furnish such services, the taxpayer contracted with various hospitals whereby, under a fixed schedule of rates, the hospitals agreed to furnish the designated services. As a part of the consideration for the contract the hospitals agreed that in cases of war, public disaster, general epidemic, or other conditions occasioning demand for

hospital care beyond the ability of the taxpayer to pay for at established rates, they would accept a "pro rata deduction." (R. 29, 30A.)

During the year 1939, such deductions were made to the extent of 20% of the bills rendered for services to private and semi-private cases discharged during the months of March and April, 1939.[1] (R. 7, 31, 45.)

From the organization of the taxpayer on March 11, 1937, through December 31, 1940, the taxpayer received earned income of $3,725,538.18, spent $527,735.72 for administration and $2,746,583.70 for hospitalization. (R. 7–8.)

On September 14, 1939, the taxpayer paid $220.68 as taxes for the year 1937 under Title VIII of the Social Security Act (R. 8), and thereupon brought this suit for refund. It based its right to repayment on the ground that it was organized under Chapter 176A of the General Laws of Massachusetts, as added by Chapter 409 of the Acts of 1936. These laws provided that every corporation subject to the chapter should be declared to be a charitable and benevolent corporation and its property exempt from state, county, district and municipal taxes. The taxpayer contended that such declaration was conclusive; that it was a corporation organized and operated exclusively for

[1] The 20% deduction from the bills of the discharged patients for March and April was later repaid to the hospitals in full. (R. 45.)

charitable purposes, no part of the net earnings of which inured to the benefit of any private stockholder or individual for purposes of the tax involved. (R. 8–9.)

The District Court sustained the taxpayer's position (R. 34–37), but the Circuit Court of Appeals reversed, one judge dissenting (R. 51–61).

ARGUMENT

The decision of the court below is not in conflict with any other decision and there is no basis for invoking this Court's jurisdiction to determine whether the particular facts of this case bring petitioner within the statutory exemption. The decision below is sound, and even the dissenting judge declared that "the case must be conceded to be a close one". (R. 58.)

1. The ultimate question presented is not whether petitioner is a charitable corporation for tax statutes generally, nor whether it has been designated a charitable corporation by a Massachusetts statute (cf. *United States* v. *Pelzer,* 312 U. S. 399, 402–403), but rather whether it is a charitable corporation under the Social Security Act. The Social Security Act itself is a statute embodying broad social policy, and it should not lightly be assumed that Congress intended to deny the benefits of that Act to employees of such an organization as is here involved. Petitioner's funds are not derived from charitable contributions, and the payment of a fee is an indispensable condition before its members

may obtain the benefit of medical services or hospitalization which petitioner procures for them. As pointed out by the court below, petitioner's enterprise "is essentially a business arrangement under which a group of people have banded themselves together to purchase at rates as low as possible hospital care in the event of sickness or accident." (R. 54.) The facts of this case thus distinguish it from the other decisions relied upon by petitioner, wholly apart from the differences in the statutes involved.

2. Nor is the result affected by the fact that Congress incorporated a similar organization for the District of Columbia known as "Group Hospitalization, Inc.", characterizing it as charitable. Act of August 11, 1939, c. 698, 53 Stat. 1412.

Unlike the Social Security Act, the Group Hospitilization Act was, in effect, a private bill. It was not referred to the House Ways and Means Committee or the Senate Finance Committee, though these are the Committees that normally consider federal tax legislation. Instead it was referred to the Committees on the District of Columbia. Cong. Record, Vol. 84, Part 5, p. 5408, and Part 9, p. 9911. The Committee Reports themselves throw little light upon the Congressional purpose, since they do little more than state, in condensed form, the substance of the bill. They do show, however, that the bill received the approval of the Commissioners of the District of Columbia and the Bureau of the Budget, indicating that the

bill in question was considered to involve a purely local question. H. Rep. No. 1247, 76th Cong., 1st Sess.; S. Rep. No. 1012, 76th Cong., 1st Sess.

Moreover, at the time the Group Hospitalization Act was being considered by Congress, it had under consideration various amendments to the Social Security Act. These amendments broadened the exemptions of Section 811 (b) to include certain types of organizations which had theretofore failed to qualify as charities. The amendments became law (c. 666, 53 Stat. 1360) only one day before the Group Hospitalization Act, and if Congress had intended to include such organizations within the Section 811 (b) exemption, it seems reasonable to suppose that it would have so declared.

CONCLUSION

The decision below is correct. There is no conflict. The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
LYLE M. TURNER,
Special Assistants to the Attorney General.

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